EPCRA Frequent Questions - Exemptions/Applicability Sections 311 & 312

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Exemptions

Q. Are there any exemptions under Sections 311 and 312?

A. There are five exemptions under Sections 311 and 312. These exemptions are provided in Section 311(e) in the following order:

1. *Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;*
2. *Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;*
3. *Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;*
4. *Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and*

5. *Any substance to the extent it is used in routine agricultural operations or is fertilizer held for sale by a retailer to the ultimate customer.*

There are also a number of exemptions under the OSHA Hazard Communication Standard which affect the requirement for preparing or having available an MSDS. These are listed in 29 CFR 1910.1200(b).

APPLICABILITY OF THE EXEMPTION UNDER SECTION 311(e)(1)

Chlorine — Bleach Flour

Q. A facility owner/operator uses chlorine to bleach flour at his/her facility. Would this facility owner/operator be exempt from reporting the chlorine used to bleach flour under EPCRA Section 311/312?

A. EPCRA Section 311 (e)(1) exempts any food, food additive, drug, or cosmetic regulated by the Food and Drug Administration (FDA). EPA considers a substance to be regulated by the FDA as long as the substance is used in a manner which is consistent with the FDA regulations. FDA regulations (21 CFR part 137) regulate the bleaching of flour with chlorine. Chlorine, therefore is exempt from reporting under EPCRA Sections 311/312 when its use at a facility is consistent with this FDA regulation (i.e., the bleaching of flour).

APPLICABILITY OF THE EXEMPTION UNDER SECTION 311(e)(2)

Sheets of Metal — Stored/Processed

Q. A facility purchases sheets of metal in order to manufacture its final product. A MSDS is received with this order. Must this be reported under Sections 311 or 312?

A. OSHA's Hazard Communication Standard (HCS) exempts from the definition of "hazardous chemical" those substances such as "articles". OSHA HCS define "article" as which are manufactured items other than fluid or particle: (i) which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which under normal conditions of use does not release more than very small quantities, e.g., minute or trace amounts of a hazardous chemical (as determined under paragraph (d) of this section), and does not pose a physical hazard or health risk to employees. (see 29 CFR 1910.1200(c)). However, if the sheet metal's use has the potential to expose downstream employees in a different facility to a hazardous chemical, the manufacturer must prepare or have available an MSDS for that item, even if the

manufacturer's own use of the item in its own facility does not have the potential to expose it's own employees to hazardous chemicals.

Although OSHA HCS may require facility to prepare or have available an MSDS for these sheets of metal, section 311(e)(2) exempts, "any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use." EPA interprets this exemption for solids to be broader than OSHA's exemption for "articles." The purposes of Sections 311 and 312 reporting are to inform the local community of the presence of chemicals that could potentially cause a release and thus, merit public concern. Considering this, EPA does not believe that Congress intended local communities to be notified of the presence of hazardous chemicals that raise no potential for release as they are used in that particular community. Therefore, if the facilities use of the sheet metal does not cause a release of, or otherwise result in exposure to, a hazardous chemical within the sheet metal, it is not reportable under sections 311 and 312. If facilities process sheet metal, such as cutting, welding, etc. then the sheet metal would not be exempt from Sections 311 and 312 reporting requirements. The sheet metal that undergoes these processes, may have the potential to release a hazardous chemical. This potential for exposure renders the sheet metal used at these facilities ineligible for Section 311(e)(2)'s exemption from Sections 311 and 312 reporting requirements.

Sheet Metal — Cut, Welded, Brazed

Q. A facility stores and processes sheet metal that contains a hazardous chemical requiring a material safety data sheet (MSDS) under OSHA's Hazard Communication Standard (29 CFR section 1910.1200). The sheet metal, when in storage, is considered a manufactured solid and is therefore excluded from the definition of hazardous chemical under Section 311(e)(2). Does this exclusion still apply when the sheet metal is cut, welded or brazed?

A. The exclusion for manufactured solids in Section 311(e)(2) applies to "[a]ny substance present as a solid in any manufactured item to the extent exposure to that substance does not occur under normal conditions of use." Sheet metal is considered a "manufactured item" which is typically present as a solid. To determine whether or not the sheet metal falls under this exemption, the owner/operator of the facility needs to determine the extent of exposure to the substance under normal conditions of use at that facility. Storing, welding, cutting etc. can all be considered "normal conditions of use" at a facility. In this example, only the sheet metal in storage is exempt under Section 311(e)(2) because it does not create a potential for exposure to a hazardous chemical. Cutting, welding, brazing, or otherwise altering the form of the sheet metal does create a potential for exposure, thus negating the exclusion under Section 311(e)(2). During these operations, if the amount of fume or dust released is at or above 10,000 pounds, then these sheets of metal are subject to reporting under sections 311 and 312 (See Guidance published on July 13, 2010 (75 FR 39852)

Polymer Pellets

Q. If polymers are in pellet form and require material safety data sheets, are they exempt from the definition of hazardous chemical under Section 311(e)(2)?

A. Section 311(e)(2) exemption from the definition of hazardous chemical applies to "[a] ny substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use." Polymers in pellet form are manufactured items in a solid state and would not normally be a source of any hazardous chemical exposure, therefore the polymers in pellet form are normally exempt (October 15, 1987, 52 FR 38344;). Altering the solid state of the pellets (e.g., as part of a manufacturing process) creates a potential for exposure and would cause the polymers to become subject to the hazardous chemical threshold determinations (40 CFR section 370.10). During this alteration, if the amount of fume or dust released is at or above 10,000 pounds, then the pellets are reportable under sections 311 and 312 (See Guidance published on July 13, 2010 (75 FR 39852).

APPLICABILITY OF THE EXEMPTION UNDER SECTION 311(e)(3)

Automobile Batteries

Q. A facility sell automobile batteries wholesale. Are these batteries at the wholesaler's facility exempt from reporting under Sections 311/312 due to the household product exemption under Section 311(e)(3)?

A. Section 311(e)(3) exempts from the definition of hazardous chemical "(a)ny substance to the extent is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public." This exclusion applies to household or consumer products either in use by the general public or in commercial or industrial use when the product has the same form and concentration as that intended for use by the general public. The term "form" refers to the packaging, rather than the physical state of the substance. Therefore, car batteries held for sale by the wholesaler are exempt from reporting since the hazardous chemicals contained are in the same form and concentration as batteries sold for use by the general public.

Non-Industrial Batteries

Q. Sections 311 and 312 apply to owners or operators of any facility that is required to prepare or have available a material safety data sheet (MSDS) for an OSHA defined hazardous chemical present

at the facility at any one time in amounts equal to or greater than established thresholds. Facility owners or operators must file MSDSs and Tier inventory forms for each hazardous chemical which meets the reporting criteria. A facility purchases non-industrial batteries in the same form as those packaged for use by the general public. Must the facility consider the batteries when calculating whether Sections 311/312 thresholds have been triggered?

A. No. Section 311(e)(3) exempts "any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use for the general public." Because the public is generally familiar with the hazards posed by such materials, the disclosure of such substances is unnecessary for right-to-know purposes. The exemption extends to any substance packaged in the same form or concentration as a consumer product whether or not it is used for the same purpose as the consumer product (October 15, 1987, 52 FR 38344).

Heating Fuel — Household and Business

Q. Is household heating fuel exempt from Sections 311 and 312 requirements?

A. Section 311(e)(3) exempts, "any substance to the extent it is used for personal, family or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public." This household product exemption does not apply to the use of household heating oil at business buildings for heating purposes. This exemption was intended by Congress and EPA to apply to packaged products as opposed to substances transported in bulk, that are distributed to the general public in a form with which the general public is familiar. EPA stated in the preamble to the final regulations, "Thus a substance may be packaged in small containers when distributed as a household product but transported or stored in bulk quantities when used for other purposes. Even though in the same concentration as the household product, a substance may pose much greater hazards when present in significantly larger quantities. In addition, while the general public may be familiar with the hazards posed by small packages of hazardous materials, they may not be as aware of the hazards posed by or likely location of the same substances when transported or stored in bulk (October 15, 1987, 52 FR 38344,38348). Fuel oil used for heating business buildings is not transported or distributed in small containers. Rather, the heating oil is transported in bulk by truck and dispensed into storage tanks at the business address. Just as the heating oil is not "packaged" when being transported in bulk by truck, it is not "packaged" when dispensed into a storage tank at the business site. Although heating oil is present in the same concentration and used for the same purposes at both household and a business, only fuel oil used at a household would be exempt and only under the first clause of the exemption ("any substance to the extent it is used for personal, family or household purposes"). Therefore, heating oil used at business buildings is not exempt from Sections 311 and 312 reporting requirements.

Licensed Product

Pennsylvania restricts the use of a product that is packaged for distribution and use by the general public by requiring users within the State to obtain a license. This product requires a material safety data sheet under OSHA, and thus may be subject to the reporting requirements of EPCRA Sections 311 and 312. Does this product meet the consumer product exemption under the definition of hazardous chemical, which is "...any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public" (40 CFR section 370.66)?

A. Any substance that is in the same form and concentration as a product packaged for distribution and use by the general public is exempt from the definition of hazardous chemical and is not reportable under Sections 311 and 312. This exception to the definition of hazardous chemical under EPCRA has been referred to as the "consumer product exemption." If a license is required for use of a product, it may not be considered a consumer product. In this case, the determining factor is accessibility of the product by the general public. If any private citizen can obtain a license for use of the product, then it is considered a consumer product. If some private citizens cannot obtain the license, then the use of the product is limited to facilities that can obtain the license; thus the product does not meet the consumer product exemption. If the restricted product is present at a facility above the applicable reporting threshold, then it is reportable under Sections 311 and 312. Reporting on this product may vary from State to State depending on the requirements and limitations in obtaining a license for use.

Paint Mixing by a Retailer

Q. A store sells paint in five-gallon cans to the general public. Customers may purchase the paint as received from the manufacturer, or they may request a custom shade of paint. To attain the customer's desired shade, store employees will mix two or more base colors. This process involves opening the cans, mixing the colors together, and pouring the custom-made shade into a five-gallon can. Sections 311 and 312 require facility owners and operators to report all hazardous chemicals as defined by 29 CFR section 1910.1200(c) that exceed the applicable thresholds found in 40 CFR 370.10. Section 311(e)(3) of EPCRA excludes from the definition of hazardous chemical any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. For reporting under Sections 311 and 312, will this paint qualify for the consumer product exemption found in Section 311(e)(3), or must the store owner or operator report on the custom-mixed paint since it is processed to achieve the final form purchased by the consumer?

A. The paint is exempt from the definition of hazardous chemical under the consumer product exemption in 40 CFR section 370.66 regardless of whether it is mixed on the premises or purchased by the consumer in the same form the store received it. Any substance that is found in the same form and concentration as a product packaged for general distribution qualifies for this exemption (October 15, 1987, 52 FR 38344). Since both the manufacturer's premixed paint and the store's custom-made shades are in the same form and concentration as products packaged for distribution by the general public (indeed, they are in such products), none of the chemicals found in either type of paint are reportable under Sections 311 and 312.

Manufacturing Household Products

Q. Is a facility that manufactures household products exempt from reporting under Sections 311 and 312 due to the household products exemption in EPCRA?

A. Section 311(e)(3) exempts from the definition of "hazardous chemical" any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. This exclusion applies to household or consumer products, either in use by the general public or in commercial or industrial use when the product has the same form and concentration as that intended for use by the public. It also applies to these products when they are in the same form and concentration prior to distribution to the consumer, even when the substance is not intended for use by the general public. The term "form" refers to the packaging, rather than the physical state of the substance. However, the manufacturer is exempt from reporting the manufactured product only when the product is in the final consumer form. The manufacturer is not exempt from reporting the raw or processing materials.

APPLICABILITY OF THE EXEMPTION UNDER SECTION 311(e)(4)

Doctors' Offices and Pharmacies

Q. Sections 311 and 312 require facility owners or operators to file inventory reports detailing the name, amount, and location of hazardous chemicals present at a facility in excess of the established threshold quantities. Hazardous chemicals are defined by OSHA's Hazard Communication Standard, found at 29 CFR 1910.1200(c), which requires facility owners or operators to maintain material safety data sheets for all hazardous chemicals present at the facility. Section 311(e)(4) and 40 CFR 370.66 exclude from the definition of hazardous chemical, "any substance to the extent that it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual." The EPCRA program has adopted the definition of a technically qualified

individual from the Toxic Substances Control Act (TSCA) regulations found at 40 CFR 720.3(ee); the term includes any person who, because of education, training, or experience is capable of understanding the health and environmental risks associated with the chemical under the individual's supervision. Does the EPCRA medical exclusion apply to chemicals stored and used at doctors' offices and pharmacies?

A. In order to be excluded from the definition of hazardous chemical, a substance must be both under the supervision of a technically qualified individual and present at a medical facility. EPA interprets technically qualified individual to refer to those persons who are adequately trained in the research or medical fields, including doctors, nurses, and pharmacists. Further, both doctors' offices and pharmacies are considered medical facilities. When a substance is used by a physician or a pharmacist at either a doctors' office or a pharmacy, it does not meet the definition of a hazardous chemical and therefore should not be included in threshold determinations under Sections 311 and 312. The exclusion also applies to the storage of chemicals at these facilities prior to their use. The medical exclusion applies only to the specific substances meeting the above criteria, and does not exempt the facility from the requirements of Sections 311 and 312. Any hazardous chemical not meeting the exclusion must be applied toward the inventory threshold. Other exclusions commonly applicable to doctors' offices and pharmacies include those found at Section 311(e)(1) and (3) exempting chemicals which are present in consumer form or which are regulated by the Food and Drug Administration.

Substances Used at a Medical Facility

Q. Are chemicals used at nursing homes exempt from reporting under Sections 311/312 due to the medical facility exemption under Section 311(e)(4)?

A. While a nursing home is treated like any other medical facility for Section 311/312 purposes, Section 311(e)(4) does not exempt a medical facility from all Section 311/312 reporting. Section 311(e)(4) exempts from the definition of hazardous chemical "(a)ny substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual." This exclusion applies to substances being used in the medical field at a nursing home (which has, as part of its normal operation, medical care responsibilities for its clients) to the extent that the substances are being used under the direct supervision of a technically qualified individual." The term "technically qualified" is interpreted to refer to individuals who are adequately trained in the research or medical fields, as appropriate (for example, doctors, nurses, research professionals, etc.). Thus, this provision exempts only those chemicals used medically by technically qualified personnel, and not the entire facility. Nursing homes may have other hazardous chemicals which are not used for medical purposes and are subject to reporting. For example, certain cleaning supplies may be reportable under Sections 311/312 if thresholds levels are met.

Research Laboratories and Medical Facilities

Q. Are research laboratories and medical facilities exempt from reporting under Sections 311 and 312?

A. Research laboratories and medical facilities are not exempt from reporting requirements under Sections 311 and 312, rather, Section 311(e)(4) excludes from the definition of hazardous chemical: "Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual." The exclusion applies to research laboratories as well as quality control laboratory operations located within manufacturing facilities. Laboratories that produce chemical specialty products or full scale pilot plant operations are considered to be part of the manufacturing facility and therefore would not be a "research laboratory." With respect to hospitals or medical facilities, the exemption applies only to hazardous chemicals that are used at the facility for medical purposes under the supervision of a "technically qualified individual." Veterinary facilities are included.

Pharmaceutical Research Labs

Q. A pharmaceutical research lab contains a pilot plant of its overall operation. The products manufactured in the pilot plant are not sold, but are distributed to hospitals and other health care facilities for use in continued clinical testing. Is the pilot plant exempt or must it report its hazardous chemicals under Sections 311 and 312?

A. In this case, because the pilot plant operation does not manufacture products for sale, the hazardous chemicals would be exempt. The primary function of the plant is research and testing.

APPLICABILITY OF THE EXEMPTION UNDER SECTION 311(e)(5)

Spraying Herbicides and Pesticides at an Animal Refuge

Q. An animal refuge sprays herbicides and pesticides on its grounds to better the quality of the area for the animal inhabitants. Is the spraying of these pesticides exempt from the requirements of Sections 311 and 312 of EPCRA under the exception to the definition of "hazardous chemical" for any substance to the extent it is used in routine agricultural operations?

A. The exemption for routine agricultural use under Sections 311 and 312 is designed to eliminate the reporting of fertilizers, pesticides, and other chemical substances when applied, administered, or

otherwise used as part of routine agricultural activities (October 15, 1987, 52 FR 38344). The term "agricultural" is a broad term encompassing a wide range of growing operations, farms, nurseries and other horticultural operations (52 FR 38344). The spraying of chemicals on the grounds of the animal refuge is not considered part of routine agricultural activity. Therefore, this activity is not exempted under sections 311 and 312 reporting.

Harvesting Services

Q. Does the agricultural use exemption, Section 311(e)(5), apply to fuels used by harvesting services to transport crops from the farm to the market or the food processor? Does the agricultural use exemption apply to the fuel used by the farmer to transport crops from the farm to the market or the food processor?

A. The exemption for routine agricultural use under Sections 311 and 312 is designed to eliminate the reporting of fertilizers, pesticides, and other chemical substances when applied, administered, or otherwise used as part of routine agricultural activities (October 15, 1987, 52 FR 38344). In other words, the agricultural exemption is intended primarily to cover hazardous chemicals used or stored at the farm facility. The term "agricultural" is a broad term encompassing a wide range of growing operations, farms, nurseries and other horticultural operations (52 FR 38344). Harvesting service is not considered to be part of the growing operation. Therefore, the fuel used by the harvesting service must be reported under sections 311 and 312 if it exceeds the reporting threshold. However, fuel used by the farmer and which is located at the farm itself would be exempt.

Citrus Grove Service Owner

Q. A citrus grove service owner stores pesticides and diesel fuel at his facility. The owner's business consists of transporting the pesticides to citrus groves and applying them to trees. This application is the only use of the pesticides; the owner does not sell them or use them in any other way. The service uses the diesel fuel exclusively to transport the fertilizers and pesticides to the citrus groves so they may be applied. Would the pesticides or diesel fuel be covered by the Section 311(e)(5) agricultural use exemption from reporting under Sections 311 and 312 of EPCRA?

A. The only instance covered by the Section 311(e)(5) agricultural exemption is the actual application of the pesticide at the farm facility. The owner/operator of the farm does not need to report the use of the pesticide at the citrus grove location (farm) because the citrus grove is considered a routine agricultural operation. With regard to the storage of the pesticides and diesel fuel at the service facility, these must

be reported. The agricultural exemption is intended to primarily cover use and storage of hazardous chemicals at the farm facility.

Retailer Selling Ammonia as a Fertilizer and Coolant

Q. Ammonia is held for sale by a retailer in a large storage tank. The retailer sells the ammonia as both an agricultural fertilizer and as a coolant for air conditioning systems. Section 311(e)(5) of EPCRA exempts from the definition of a hazardous chemical "(a)ny substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer". For purposes of EPCRA sections 311/312 reporting, how would this combined usage of the ammonia tank be affected by the agricultural use exemption under EPCRA section 311(e)(5)?

A. The ammonia in the tank that is held for use as coolant is not exempt from reporting under EPCRA section 311(e)(5) since it will not be "....used in routine agricultural operations". Neither is ammonia held for use as coolant "... a fertilizer held for sale by a retailer to the ultimate customer". Therefore, the amount of ammonia held for sale as coolant is reportable under EPCRA sections 311/312. The amount of ammonia held for sale as a fertilizer to the ultimate customer, however, would be exempt from reporting. *[Note that, since the retailer has a "mixed use" tank, she/he may find it easier to count all the material in the tank (both fertilizer and coolant) when determining whether or not to report. This is an appropriate option but it is not, however, required.]*

Retailer Selling Ammonia and Phosphoric Acid

Q. Ammonia and phosphoric acid are held for sale by a retailer in large storage tanks. The retailer sells both ammonia and phosphoric acid to farmers to be used as fertilizers. The retailer also blends ammonia with phosphoric acid to produce a new compound which, in turn, is also sold to farmers as fertilizer. Are the amounts of ammonia and phosphoric acid that are held for blending at the retailer's facility exempt from the definition of "hazardous chemical" under Sections 311/312?

A. Section 311(e)(5) exempts from the definition of hazardous chemical "any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer". In the above example, the ammonia and phosphoric acid are intended for blending are not exempt from the definition of "hazardous chemical" since they are not "... a fertilizer held for sale by a retailer to the ultimate customer." They are, in essence, chemicals held for the purpose of producing a fertilizer. In other words, the ammonia and phosphoric acid held for blending are the starting materials used to make a fertilizer; they are not, in this instance, fertilizers themselves. The retailer should report the amounts of ammonia and phosphoric acid that are held for blending to produce the new fertilizer.

The amounts of ammonia and phosphoric acid that are sold directly to the ultimate customer (without blending) are fertilizers exempt from the definition of "hazardous chemical" and would, thus, be exempt from reporting under Sections 311/312.

Farmers — Pesticides, Fertilizers, and Other Substances

Q. Under Sections 311 and 312, must a farmer report the fertilizers, pesticides, and other chemical substances he uses to protect his crops?

A. Farming operations/farming facilities are subject to OSHA HCS (August 24, 1987). Even if a farming operation is covered under Sections 311 and 312, many of the substances may still be exempt from most reporting requirements. Under Section 311(e)(5), any substance - when used in routine agricultural operations - is exempt from reporting under Section 311 and 312. This exemption is designed to eliminate the reporting of fertilizers, pesticides, and other chemicals when stored, applied, or otherwise used at the farm facility as part of routine agricultural activities. This exemption would also include the use of gasoline and diesel to run farm machinery and also paint to maintain equipment. Thus, the storage and use of a pesticide or fertilizer on a farm would be considered the use of a chemical in routine agricultural operations and is, therefore; exempt under Sections 311 and 312.

Aquaculture

Q. Sections 311 and 312 require facility owners or operators to submit Material Safety Data Sheets (MSDSs) and annual inventory reports for any hazardous chemical subject to OSHA's Hazard Communication Standard (29 CFR 1910.1200(c)) which is present at a facility above a reportable threshold (40 CFR 370.10). An owner or operator does not have to count toward threshold determinations the amount of a chemical exempt from the definition of a hazardous chemical under Section 311(e) and 40 CFR 370.66. Pursuant to 40 CFR 370.66, any substance used in routine agricultural operations is exempt from the definition of hazardous chemical and therefore is not included in threshold determinations for reporting purposes. Would this agricultural exemption apply to chemicals used for fish farming (i.e., aquaculture)?

A. As defined by the National Aquaculture Act of 1980 in 16 U.S.C. section 2802(1), aquaculture involves the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching. The agricultural exemption under Sections 311 and 312 applies to a wide range of growing operations including livestock production, nurseries, and other horticultural operations (October 15, 1987, 52 FR 38344). Because aquaculture involves livestock and vegetation production, EPA

considers it a type of agriculture, and thus the chemicals used for growing and breeding fish and aquatic plants in an aquacultural operation are excluded from Sections 311 and 312 reporting requirements.

Horticultural Operations and Golf Courses

Q. Sections 311 and 312 require facility owners or operators to submit Material Safety Data Sheets (MSDS) and annual inventory reports (Tier I/Tier II Forms) for any hazardous chemical subject to OSHA's Hazard Communication Standard (29 CFR section 1910.1200) when present at a facility above threshold amounts (40 CFR section 370.10). Under Section 311(e)(5), any substance used in routine agricultural operations is exempt from Section 311/312 reporting requirements. Is the growing of turf by a nursery considered routine agricultural operations? Does this exemption apply if the turf is grown and maintained by a golf course?

A. The agricultural exemption found at Section 311(e)(5) excludes fertilizers held for sale by retailers and any substance which is used in routine agricultural operations. Agricultural operations is a broad term which EPA has interpreted to apply to various types of facilities, including nurseries and other horticultural operations (52 FR 38344; 38349; October 15, 1987). Therefore, chemicals used in direct support of turf growing by a nursery are exempt under Section 311(e)(5). In contrast, a golf course is not an agricultural operation. Golf courses derive their income from the playing of golf, not the sale of turf or other horticultural products. Therefore, all hazardous chemicals (e.g., pesticides, fuel for equipment) handled by the golf course must be reported under Section 311/312 if they exceed applicable thresholds.

Farmer Suppliers and Retailers

Q. Would a farm supplier or retail distributor be excluded from Sections 311 and 312 reporting based on the agricultural exemptions?

A. Under Section 311(e)(5), retailers are exempted from reporting requirements for fertilizers only. Therefore, substances sold as fertilizers would not need to be reported under Sections 311 and 312 by retail sellers. However, other agricultural chemicals, such as pesticides, would have to be reported under Sections 311 and 312 by the retail sellers.

Farm Cooperatives

Q. How are the activities of "farm cooperatives" interpreted for reporting purposes?

A. Farm cooperatives would be subject to Sections 311 and 312 reporting requirements.

Petroleum Products

Q. Are petroleum products exempt from the reporting requirements of Sections 311 and 312?

A. Petroleum products are not specifically exempted from Sections 311 or 312 reporting. However, some products could fall under the exemptions listed in Section 311(e).

Oil Wells: Generic Reporting

Q. A petroleum company owns many oil wells on a large oil field. Each well is on its own plot of land. These plots of land are not adjacent or contiguous and the oil field itself spans many local planning districts. For purposes of Sections 311/312 reporting, is each oil well a separate facility and must separate reports filed for each oil well?

A. The definition of facility means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). This definition was revised on July 26, 1990 (55 FR 30632) to include manmade structures as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. Each well is considered to be a separate facility, since the well properties are not on adjacent or contiguous sites. The fact that one oil company may own the subsurface rights of an entire oil field does not make the field one "facility". Under Sections 311/312, a report must be prepared for each facility owned or operated by the same person. The regulations stipulate that certain information must be provided to the specified agencies. Nowhere do the regulations stipulate a separate report for each facility, EPA does not prohibit one report being filed for similar multiple facilities, so long as the report satisfies the statutory information requirements. Filing one report for similar multiple facilities is a kind of "generic reporting". A generic report would consist of one submission for each section - one MSDS for each reportable chemical and one Tier I/II - which would provide the required information on each well (facility). However, a generic report may only be submitted for similar facilities. In order for facilities to be considered similar, they must have present the same extremely hazardous substances and hazardous chemicals on-site at any one time in similar amounts. If the facilities are not similar, the generic report would not contain the facility-specific required information and the facility would not be considered in compliance with Sections 311/312.

When submitting a report under Sections 311/312, the report must be sent to the SERC, the LEPC and the fire department. In the case of a generic report being submitted, the report must be submitted to every SERC, LEPC and fire department under whose jurisdiction the similar facility crosses. In the case of reporting for an oil field and oil wells therein, generic reporting will prove beneficial since most wells are similar on a given field. Simply make sure that the wells are in fact similar, that the generic report provides the facility-specific information required and that the report is submitted to all relevant State and local agencies. In that manner, the generic report will provide all facility-specific information to all relevant State and local agencies.

Transportation Exemption and Breakout Tanks in a Pipeline

Q. A transportation firm owns a pipeline that transports oil to an intermediate storage tank at their pumping station. At the pumping station the oil is sold and sent by a secondary pipeline to the purchaser. The transportation firm also owns the secondary pipeline until the pipeline reaches a valve in front of a purchaser's tank. The transportation firm sends 10,000 gallons of oil to the intermediate storage tank. Of this oil, 5,000 gallons are purchased by company A, so the transportation firm then directs the 5,000 gallons into the pipeline leading to Company A. Is the oil stored in the intermediate storage tank exempt from Section 311 and 312 reporting under Section 327 transportation exemption?

A. Section 327 of EPCRA exempts from any Title III reporting requirement other than the Section 304 notification obligation, substances or chemicals in transportation or being stored incident to transportation, including the transportation and distribution of natural gas. In a final rule promulgated April 22, 1987 (52 FR 13378) the Agency interpreted this provision to exempt from TITLE III reporting the transportation of substances in pipelines. The Agency stated, "Title III does not apply to the transportation of any substance or chemical, including transportation by pipeline, expect as provided in Section 304." As Title III does not itself define "pipeline", the Agency will refer to the definition found in regulations implementing the hazardous Materials Transportation Act (HMTA) and promulgated by the Department of Transportation. EPA believes HMTA to be appropriate as a reference because of Congress' explicit reference to that Act in the legislative history referring to the Section 327 transportation exemption. In the Conference Report, Congress stated that limiting the exemption for storage incident to transportation to those chemicals under active shipping papers was consistent with HMTA. Department of Transportation regulations implementing HMTA define "pipeline" as "all parts of a pipeline facility through which hazardous liquid moves in transportation, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks." "Breakout tanks" in turn, are defined under these same regulations as "a tank used to (a) relieve surges in a hazardous liquid pipeline system of (b) receive and store hazardous liquid transported by pipeline for reinjection and continued transportation by pipeline". Because the

intermediate storage tank owned by the transportation firm described above receives and stores hazardous liquid transported by pipeline for reinjection and continued transportation by pipeline, it meets this definition of "breakout tank" included within the Department of Transportation definition of "pipeline". Therefore, EPA would interpret that the oil contained in such an intermediate tank would be exempt from reporting under the Section 327 transportation exemption.

Q. An oil corporation's pipeline facility contains three kinds of tanks. One type is a breakout tank used to receive and store hazardous liquids transported by a pipeline for reinjection and continued transportation by the corporation's pipeline. Another type is used to receive and store hazardous liquid for delivery to pipelines owned by another corporation. The third type of tank receives and stores hazardous liquids for delivery to tank trucks and other modes of transportation. Would any tanks be covered by Section 327, the transportation exemption to Title III?

A. Section 327 of EPCRA exempts from any Title III reporting requirement (other than the Section 304 notification obligation) substances or chemicals in transportation and/or being stored incident to transportation, including the transportation and distribution of natural gas. In a final rule promulgated April 22, 1987 (52 FR 13378), the Agency interpreted this provision to exempt from Title III reporting the transportation of substances in pipelines. The Agency stated, "Title III does not apply to the transportation of any substance or chemical, including transportation by pipelines, except as provided in Section 304." As Title III does not itself define "pipeline," the Agency will refer to the definition found in regulations implementing the Hazardous Materials Transportation Act (HMTA) and promulgated by the Department of Transportation (DOT). EPA believes the HMTA to be appropriate as a reference because of Congress' explicit reference to that Act in the legislative history referring to Section 327 transportation exemption. In the Conference Report, Congress stated that limiting the exemption for storage incident to transportation to those chemicals under active shipping papers was consistent with the HMTA. DOT regulations implementing the HMTA define "pipeline" as "all parts of pipeline facility through which a hazardous liquid moves in transportation, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery statings and fabricated assemblies therein, and breakout tanks" under 49 CFR 195.2. "Breakout tanks" in turn, are defined under these same regulations as a "a tank used to (a) relieve surges in a hazardous liquid pipeline system or (b) receive and store hazardous liquid transported by pipeline for reinjection and continued transportation by pipeline." DOT includes the first two types of tanks within its definition of "pipeline" but not the third type of tank. The first type of tank is a breakout tank (49 CFR 195.2) and as such is part of the pipeline regulated by DOT. The second and third types of tanks are examples of delivery stations. The delivery station which injects the hazardous substance into someone else's pipeline is part of the "pipeline" under DOT regulations. The delivery station which delivers the hazardous substance to other modes of transportation is called a terminal and is not included within the DOT definition of pipeline. Terminals are thus not covered by the transportation exemption in Section 327 of EPCRA. The transportation exemption would apply to the substances in the first two types of tanks and they would be exempt from all of Title III except Section 304. The substance in the third tank would not be covered by the transportation exemption and the facility owners and/or operator would be required to comply with EPCRA, as appropriate. Section 327 of

Title III exempts substances from the requirements of the Title III, except Section 304, if those substances are in transportation or are stored incident to transportation.

Transportation Exemption - Pipelines

Q. Pipelines and similar transport systems are covered under the OSHA Hazard Communication Standard (HCS) August 24, 1987). Must the "storage" materials in these facilities be reported under Sections 311 and 312?

A. Materials in pipelines are included in the general exemption for substances in transportation from all requirements under Title III except Section 304 release reporting. Therefore, despite the coverage of these facilities under OSHA, the materials in pipelines are not subject 311 and 312.

Public Access

Q. How will citizens have access to Tier I or Tier II inventory forms?

A. Tier I information may be obtained from State emergency response commissions or local emergency planning committees during normal working hours. Tier II information for a specific chemical at a facility may be obtained by sending a written request to the State emergency response commission or the local emergency planning committee. If they do not have the requested Tier II information, they may obtain it from the facility. For chemicals present below 10,000 pounds, the response is discretionary by either the State emergency response commission or the local emergency planning committee and depends on the justification of need by the requestor. The facility must make the information available to the SERC or LEPC if they request it on behalf of the individual.

Public Request

Q. In complying with a public request for Tier II information under Section 312(e)(3)(C), how is "need" determined?

A. Guidelines for determining the need to know are the responsibility of the local emergency planning committees and the State emergency response commissions.

Requests by the LEPC

Q: Under Section 312 , if a Local Emergency Planning Committee (LEPC) requests a TierI/II from a facility owner/operator for a substance which is exempt (either under EPCRA, Section 311(e), or the OSHA Hazardous Communication Standard, 29 CFR 1910.1200(b)), are they required to comply with the request? If the LEPC requests Tier II information for the substance using their authority under Section 303(d)(3) would the facility owner/operator be required to submit the requested information?

A: Under Section 312 , since the substance is exempt, the facility would not need to include information on the substance in their Tier I/II report. Therefore, if the LEPC requests Tier II information from the facility under Section 312(e) on the exempted substance, the facility is not required to comply with the request. However, if the facility is subject to emergency planning under Section 302 of EPCRA, then the LEPC would have the authority (Section 303(d)(3)) to request any information necessary for developing and implementing the emergency plan. Such information may include Tier II information if the information is necessary for Section 303 planning purposes.